

Message Text

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PAGE 01 BERN 05192 281533Z

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ACTION EUR-25

INFO OCT-01 ISO-00 EB-11 COME-00 FTC-01 L-03 RSC-01 DRC-01

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R 281458Z DEC 73

FM AMEMBASSY BERN

TO SECSTATE WASHDC 8561

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E.O. 11652: N/A

TAGS: EGEN, SZ

SUBJECT: FTC INVESTIGATION OF NESTLE

REF: STATE 193836,

1. EMBASSY HAS RECEIVED FROM NESTLE/VEVEY COPY OF ITS LETTER DATED DECEMBER 14, 1973 TO FTC ASSISTANT DIRECTOR, BUREAU OF COMPETITION, IN RESPONSE LATTER'S LETTER OF NOVEMBER 29. NESTLE EXPRESSES "SURPRISE AND PROFOUND DISAPPOINTMENT" RE FTC LETTER AND RECALLS EXTENSIVE DOCUMENTATION WHICH IT HAD ALREADY SUBMITTED TO FTC. NESTLE NOTES EXP*NSE WHICH INCURRED IN SUBMITTING DOCUMENTS AND OTHER INFORMATION, AND EXPRESSES OPINION THAT SUBM*SSION HAS EXCEEDED WHAT COULD BE REQUIRED UNDER SWISS LAW. SUGGESTION MADE THAT FTC IDENTIFY WHAT ARE "IMPORTANT QUESTIONS" (REFERRED TO IN LETTER) AND THEN NESTLE AND FTC DISCUSS THESE CRITICAL ISSUES AND INFORMATION NEEDED TO RESOLVE THEM. NESTLE LETTER CLOSES BY EXPRESSING STRONG SYMPATHY WITH U. S. ANTITRUST OBJECTIVES, INTENTION TO CONTINUE FULL COOPERATION, BUT GROWING BELIEF THAT THERE MAY BE FEELING IN FTC STAFF THAT BECAUSE NESTLE IS A FOREIGN COMPANY IT IS LESS TO BE TRUSTED THAN AN AMERICAN COMPANY.

2. EMBASSY IS, OF COURSE, UNABLE JUDGE REASONABLENESS OF ADDITIONAL REQUESTS SET FORTH 19 PAGE FTC LETTER OF NOVEMBER 29 OR MERITS OF NESTLE RESPONSE. WE WISH REITERATE HOWEVER AS WE HAVE IN PAST THAT FTC INVESTIGATION OF NESTLE ACQUISITIONS OF LIBBY AND
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PAGE 02 BERN 05192 281533Z

STOUFFER ARE BEING WATCHED CLOSELY IN SWITZERLAND, AND WE PRESUME

ELSEWHERE, BY FIRMS AND GOVERNMENTS INTERESTED IN POSSIBLE INVESTMENT IN U.S. IT ALSO SEEMS TO US*THAT NESTLE HAS ALREADY PRESENTED CONSIDERABLE DOCUMENTATION. THUS, WE WOULD URGE FTC MEET WITH COUNSEL FOR NESTLE IN EFFORT DEFINE "IMPORTANT QUESTIONS" AND FURTHER DOCUMENTATION REQUIRED TO PROVIDE ANSWERS.

3. IT SEEMS TO US THERE MAY POSSIBLY ALSO BE SOME CONFUSION AS TO FOCUS OF FTC INVESTIGATION. IS ISSUE PRIMARILY ACQUISITION OF LIBBY AND STOUFFER OR BROADER INVESTIGATION OF VARIOUS MANUFACTURERS OF GROCERY PRODUCTS? IF LATTER, KEY QUESTION WOULD NOT SEEM TO BE NESTLE CONTROL BUT STRUCTURE U.S. GROCERY INDUSTRY AND PLACE THEREIN OF LIBBY AND STOUFFER.

4. WE UNDERSTAND FROM FLATIN (EUR/CE) LETTER OF DECEMBER 6 THAT TARGET DATE FOR FINAL FTC ACTION REMAINS EARLY 1974. WHILE WE HOPE FOR EARLY RESOLUTION THIS CASE, WE HAVE GREATER CONCERN THAT MATTER BE HANDLED IN WAY WHICH TAKES ACCOUNT OF BROADER ISSUES OF FOREIGN INVESTMENT IN U.S.

5. WE ASSUME THAT IN NEAR FUTURE SWISS EMBASSY MAY AGAIN RAISE FTC NESTLE CASE WITH DEPT. ALTHOUGH WE HAVE NO CONFIRMATION. EMBASSY WOULD APPRECIATE BEING KEPT INFORMED ON STATUS CASE AND PARTICULARLY FTC RESPONSE TO DEC 14 NESTLE LETTER.
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